A.F.R.



**HIGH COURT OF JUDICATURE AT CHHATTISGARH: BILASPUR**

**DIVISION BENCH**

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| **CORUM** | : | **HON'BLE SHRI S.R. NAYAK, C.J.** |
| | : | **HON'BLE SHRI D.R. DESHMUKH, J.** |

**WRIT PETITION 952/2001**

**PETITIONERS**

1. The State of Chhattisgarh,
Through Principal Secretary,
School Education Department,
Mantralaya, Raipur.

2. The Block Education Officer,
Malkharoda, District – Janjgir – Champa

3 The Joint Director,
Treasury and Accounts
Bilaspur Division,
Bilaspur

4. The Joint Director,
Public Instruction,
Bilaspur - Chhattisgarh

**VERSUS**

**RESPONDENTS**

1. Foolsai Sone,
Aged about 65 years,
S/o Shri Ram Rai,
Retd. Head Master,
Girls Primary School,
Malkharoda,
District – Janjgir – Champa,
R/o Village and Post Malkharoda,
District – Janjgir – Champa.

2. Registrar,
The M.P. Administrative Tribunal,
Raipur Bench, Raipur –
Chhattisgarh

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Present : Shri Utkarsh Verma, Dy. Govt. Advocate for the State/petitioners.
Shri Ashish Shrivastava, Counsel for the respondent no.1.

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**ORAL ORDER**

**(Passed on 21st April 2006)**

The following oral order of the Court was passed by

**S.R. NAYAK, CJ:**

The State of Chhattisgarh and its authorities being aggrieved by the order of the Madhya Pradesh Administrative Tribunal, Raipur Bench (for short the Tribunal) dated 19/12/2000 passed in Original Application No.709/1999 have preferred this Writ Petition under Articles 226/227 of the Constitution of India.

The facts of the case, in brief, are as follows :

The first respondent was appointed as Assistant Teacher w.e.f. 1/7/1959. He was absorbed as Assistant Teacher w.e.f. 1/10/1963. While serving as such, in view of the recommendation made by the Chowdhary Pay Commission, the pay of the first respondent was fixed in the pay scale of Rs.515-10-575-15-800-25-925. The arrears of pay Rs.529.30 was paid to the first respondent on 25/10/1985. The first respondent underwent Hindi training in 1981 and Science training during the period from 2/5/1976 to 31/5/1976. Consequent upon his undergoing

training successfully, he was allowed Time Bound Advance Scheme in the Pay Scale of Rs.635-950 with the next date of increment on 30/7/1983. The first respondent's pay was fixed at Rs.1250/- per month on 1/1/1986 with the next date of increment on 30/07/1986. Furthermore, as per the Pay Fixation Rules of 1990, the first respondent's pay was fixed in the pay-scale of Rs.1200-40-1440-50-2040 with the next increment date on 30/07/1986. It is stated that he was also paid Rs.910 as arrears. Subsequently, the first respondent was promoted as Head Master and his basic pay was fixed at Rs.1490/-. Having served as Head Master at Primary School, Admar, the first respondent retired from service on 31/7/1998 on attaining the age of superannuation. After the retirement of the first respondent, his service book was sent to the Joint Director of Treasury, Accounts and Pensions, Bilaspur, for settling his pensionery claims. The Joint Director of Treasury opined that the fixation of the first respondent's pay in the pay-scale of Rs.515-925 was wrong and he was entitled to the pay-scale of Rs.485-740 only. In the premise of above opinion of the Joint Director of Treasury, Accounts and Pension, a sum of Rs.1,03,715/- was sought to be recovered from the first respondent being the excess amount paid to him.

At that stage, the first respondent instituted OA No 709/1999 before the Tribunal, contending that fixation of his pay in the pay scale of Rs.515-925 was regular and legal and the impugned action to recover the so-called alleged excess is arbitrary

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and illegal. The Original Application was opposed by the petitioners by filing return. In the return, the impugned action was sought to be supported by contending that since the first respondent was an untrained Teacher, his pay should have been fixed in the pay scale of Rs.485-740 instead of the pay scale of Rs.515-925. The Tribunal having placed reliance on a circular dated 22/11/1979 issued by the Joint Director of Treasury, Public Education, Directorate (M.P.) marked as annexure A-13 before the Tribunal, has opined that the fixation of the pay-scale of the first respondent in the pay-scale of Rs.515-925 is in order and legal. Alternatively, the Tribunal, has opined that since the pay of the first respondent was fixed in the pay-scale of Rs.515-925 by the petitioners themselves without there being any misrepresentation or misleading on the part of the first respondent/employee, the impugned recovery was unauthorized and could not be sustained in the light of the Judgment of the Apex Court in the case of ***Sahib Ram vs. State of Haryana and others***[1]. Resultantly, the Tribunal allowed the Original Application and quashed the impugned action and directed the petitioners herein to settle the pensionary claims of the first respondent. Being aggrieved by the above order of the Tribunal, the writ petition is filed.

We have heard learned counsel for the parties. It was contended by the learned Govt. Advocate for the petitioners that

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1. *1995 Supp (1) S.C.C. 18.*

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since admittedly the first respondent was not a trained teacher, he was not entitled to the pay-scale of Rs.515-925, in terms of the recommendation of Chowdhary Pay Commission and, therefore, no exception could be taken to the action of the petitioners in seeking to recover sum of Rs.1,03,715/- from the first respondent, which was paid in excess to the first respondent. Learned counsel for the first respondent, *per contra*, would support the impugned order of the Tribunal.

Having heard learned counsel for the parties, the only question that arises for our consideration is whether the petitioners are justified and have legally acted in seeking to recover sum of Rs.1,03,715/- towards the alleged excess payment made to the first respondent.

At the threshold, it needs to be noticed that it is nobody's case that the pay of the first respondent was fixed by the petitioners in the pay-scale of Rs.515-925 due to any misrepresentation made by the first respondent. The pay of the first respondent was fixed by the Department itself in pursuance of the recommendation made by Chowdhary Pay Commission. The first respondent during his tenure enjoyed that pay-scale and subsequently retired on attaining the age of superannuation. The impugned action was initiated only after the first respondent retired on attaining the age of superannuation. If this is the factual matrix, in our considered opinion, the law laid down by the

Apex Court in the case of ***Sahib Ram vs. State of Haryana and others***[1] (supra) applies to the facts of the present case. On that count itself, the impugned action could not be sustained and liable to be quashed. Be that as it may, even on merit also, we should say that the pay-fixation of the pay of the first respondent in the pay-scale of Rs.515-925 was regular and legal. Annexure A-13, Circular to which reference is made by us supra directs that all the Assistant Teachers regardless of the fact whether they have acquired training qualification, if they have put in 20 years of qualifying service or attained the age of 50 years, are entitled to seek fixation of the pay in terms of the recommendation of Chowdhary Pay Commission. There is no dispute between the parties that on the relevant date, the first respondent had put in more than 20 years of qualifying service and this fact is noted by the Tribunal in its order and that fact is not contested before us by the learned Govt. Advocate. If that is so, fixation of the pay of the first respondent in the pay-scale of Rs.515-925 is regular and legal. Looking from any angle, we do not find any weighty or substantive ground to interfere with the order made by the Tribunal.

The writ petition is devoid of merit and is accordingly dismissed. In the facts and circumstances of the case, the parties shall bear their respective costs.

**Sd/-**
**Chief Justice**

**Sd/-**
**Dilip Raosaheb Deshmukh**
**Judge**

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